

## Update: Traffic Benchbook— Revised Edition, Volume 2

### CHAPTER 2

#### Procedures in Drunk Driving and DWLS Cases

##### 2.6 Arraignment/Pretrial Procedures

###### E. Guilty and Nolo Contendere Pleas

###### 2. Use of Uncounselled Conviction to Enhance Subsequent Charge or Sentence

Insert the following text at the end of Section 2.6(E)(2) on page 2-36:

In *People v Haynes*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003), the Court of Appeals upheld the use of a prior uncounselled juvenile adjudication for a “zero tolerance” violation for the purposes of enhancement. The Court held that “a trial court may consider prior juvenile delinquency adjudications obtained without the benefit of counsel in determining a defendant’s sentence where the prior adjudication did not result in imprisonment.” *Id.* at \_\_\_. The Court reaffirmed existing case law permitting use of prior uncounselled misdemeanor convictions for enhancement where counsel was not required for the prior offenses or where the prior adjudications did not result in imprisonment. *People v Reichenbach*, 459 Mich 109 (1998); *People v Daoust*, 228 Mich App 1, 17–19 (1998).

## CHAPTER 2

### Procedures in Drunk Driving and DWLS Cases

#### 2.9 General Sentencing Considerations for §625 and §904 Offenses

##### B. Establishing Prior Convictions

Insert the following text at the end of Section 2.9(B) on page 2-49:

In *People v Callon*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003), the Michigan Court of Appeals upheld the use of a “prior conviction” to enhance a conviction of OUIL/UBAL to a felony. The defendant was convicted of OUIL as a third offender. The defendant claimed that use of his “prior conviction” operated as an ex post facto law because the prior OWI occurred before the effective date of the amendment adding OWI to the list of offenses in the enhancement statute. The Court held that the enhancement statute did not act as an ex post facto law because it did not attach legal consequences to defendant’s prior OWI conviction but rather attached legal consequences to the defendant’s future conduct of committing an OUIL. *Id.* at \_\_\_.

In *People v Haynes*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003), the Court of Appeals upheld the use of a prior uncounselled juvenile adjudication for a “zero tolerance” violation for the purposes of enhancement. The Court held that “a trial court may consider prior juvenile delinquency adjudications obtained without the benefit of counsel in determining a defendant’s sentence where the prior adjudication did not result in imprisonment.” *Id.* at \_\_\_. The Court reaffirmed existing case law permitting use of prior uncounselled misdemeanor convictions for enhancement where counsel was not required for the prior offenses or where the prior adjudications did not result in imprisonment. *People v Reichenbach*, 459 Mich 109 (1998); *People v Daoust*, 228 Mich App 1, 17–19 (1998).

## CHAPTER 3

### Section 625 Offenses

#### 3.1 OUIL/OUID/UBAC— §625(1)

##### C. Criminal Penalties and Other Sanctions for Violations of §625(1)

##### **3. Offenders Who Violate §625(1) Within Ten Years of Two or More Prior Convictions**

Insert the following text at the end of Section 3.1(C)(3) on page 3-7:

In *People v Callon*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003), the Michigan Court of Appeals upheld the use of a “prior conviction” to enhance a conviction of OUIL/UBAL to a felony. The defendant was convicted of OUIL as a third offender. The defendant claimed that use of his “prior conviction” operated as an ex post facto law because the prior OWI occurred before the effective date of the amendment adding OWI to the list of offenses in the enhancement statute. The Court held that the enhancement statute did not act as an ex post facto law because it did not attach legal consequences to defendant’s prior OWI conviction but rather attached legal consequences to the defendant’s future conduct of committing an OUIL. *Id.* at \_\_\_.